

Remarks

This Application has been reviewed in light of the Office Action electronically sent July 28, 2008. Claims 1-32 were pending and rejected in the application. Applicants amend Claims 2, 4-6, 9, 10, and 12-25. Applicants cancel Claims 1 and 11 without prejudice or disclaimer. For at least the reasons provided below, Applicants respectfully request reconsideration and allowance of all pending claims.

Section 102 and 103 Rejections

The Examiner rejects Claims 1-3, 5-7, 10-12, 14-18, 20-22, and 23-32 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,249,085 issued to Kinney, Jr. et al. ("*Kinney*"). The Examiner rejects Claim 4, 8, 9, 13, 19 and 23 under 35 U.S.C. § 103(a) as being unpatentable over *Kinney* in view of other references. Applicants respectfully traverse for at least the reasons below.

Claim 5, as rewritten in independent form, is allowable because the cited references fail to disclose, teach, or suggest, "**means for enabling the purchaser to make at least one adjustment**" corresponding to at least one of the vendor bids which is used by the calculating means to determine the total cost of the product to the purchase." The Office Action relies on two separate sections of *Kinney* to teach the above limitation, but this reliance is misplaced. For the convenience of the Examiner, Applicants quote these sections below in their entirety.

This confidential information gives the buyer leverage in altering the supplier's perception of the relative attractiveness of the submitted bid. During the negotiation process, suppliers may be selectively informed (at their disadvantage) of aspects of the decision making process.
(*Kinney* at Col. 7, Lines 32-34).

Accordingly, the buyer desires to prevent the suppliers from gaining insight into aspects of the transformation function that quantifies the buyer's weighting of various parameters associated with a supplier's bid. For this reason, the auction server does not feedback the transformed bids to the participating suppliers.
(*Kinney* at Col. 9, Lines 30-34).

The above two sections of *Kinney* merely disclose withholding information from suppliers regarding the transformation function used in the decision making

process. These cited portions, however, fail to disclose any “means for enabling a purchaser to make an adjustment corresponding to one of the vendor bids which is used by the calculating means to determine the total cost of the product to purchase,” as recited in Claim 5. Indeed, these paragraphs in *Kinney* fail to describe the buyer adjusting anything corresponding to one of the supplier bids.

For at least this reason, Independent Claim 5 is allowable, as are all claims depending therefrom. Independent Claims 15 and 25, as amended, are allowable at least for analogous reasons, as are all claims that depend respectfully therefrom. Favorable action is requested.

Claim 4, which currently depends from Independent Claim 5, is also allowable at least because the cited references fail to disclose, teach, or suggest, “means for communicating a vendor bid having the best total cost for the product to the vendors without revealing the identification of the vendor with the best total cost to encourage competitive bidding by the other vendors.” The Office Action page 7 states *Kinney* “does not explicitly teach this feature without revealing the identification of the vendor.” The Office Action relies on U.S. Patent No. 5,835,896 issued to Fisher et al. (“*Fisher*”) to cure the deficiency of *Kinney*, but this reliance is misplaced at least because the cited portion of *Fisher* fails to explicitly or implicitly disclose the above feature “without revealing the identification of the vendor.”

Moreover, the *Kinney-Fisher* combination suggested by the Office Action is improper at least because the *Fisher* reference teaches away from the above limitation. For example, the bidders in *Fisher* are not the claimed vendors but rather are potential purchasers who are competing for items on a merchandise catalogue page by submitting ever-increasing bids.

For at least these additional reasons Claim 4 is allowable. Claim 13, which currently depends from Claim 15, is allowable at least for analogous reasons. Favorable action is requested.

The Office Action relies on the same section of *Fisher* to cure the deficiency of *Kinney* regarding Claim 8 but this reliance on *Fisher* is not correct. More specifically, Claim 8, which currently depends from Claim 5, is allowable at least because the *Kinney-Fisher* combination proposed by the Office Action fails to disclose, teach, or suggest, “wherein said communication means enables messages to be sent to the vendors regarding the status of the bidding, ending time for the bidding and extensions of the bidding.” The portion of *Fisher* cited by the Office Action merely discloses sending electronic messages that “preferably contain the relevant merchandise information, the current high bid, the bid increment, etc., and encourage the bidder to submit a new and higher bid to outbid the current high bidder.” See *Fisher*, Col. 6, Lines 52-54. The cited portion of *Fisher* fails, however, to disclose anything about the claimed “ending time for the bidding” in addition to “extensions of the bidding.” Furthermore, Claim 8 is also allowable at least because the *Kinney-Fisher* combination is improper for at least the reasons described above. For at least these additional reasons, the rejection of Claim 8 is incorrect. Favorable action is requested.

Claim 19, which currently depends from Claim 15, is also allowable at least because the cited references fail to disclose, teach, or suggest, “wherein the auction results take into account vendors bids on a market basket of products.” The Office Action on page 7 states that *Kinney* does not teach this limitation. The Office Action attempts to cure this deficiency in *Kinney* by taking Official Notice “that this feature is old and well known in the art.” Applicants respectfully traverse. Furthermore, to the extent that the Examiner maintains any rejection based on an “Official Notice” or other information within the Examiner’s personal knowledge, Applicants respectfully request that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

CONCLUSION

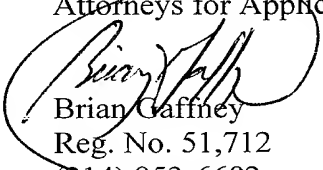
Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully request full allowance of all the pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Jenni R. Moen, Attorney for Applicants, at the Examiner's convenience at (214) 953-6809.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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